

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matters of

IP-Enabled Services

WC Docket No. 04-36

E911 Requirements for IP-
Enabled Service Providers

WC Docket No. 05-196

**COMMENTS OF THE STATE OF CALIFORNIA AND THE
CALIFORNIA PUBLIC UTILITIES COMMISSION**

The People of the State of California and the California Public Utilities Commission (“California” or “CPUC”) hereby submit these comments in response to the Notice of Proposed Rulemaking (“NPRM”) released by the Federal Communications Commission (“FCC” or “Commission”) in the above-referenced dockets, in its *First Report and Order in the Matter of IP-Enabled Services and E911 Requirements for IP-Enabled Service Providers*.

On June 3, 2005, the Commission issued its Order requiring interconnected voice over Internet Protocol (VoIP) service providers to

supply enhanced 911 (E911) capabilities to their customers as a standard feature of the service. The Order applies only to interconnected VoIP services.¹ The Order is limited to interconnected VoIP services because the FCC determined that consumers expect VoIP services that are interconnected with the PSTN to function like a regular telephone. The rules require the VoIP service providers to provide E911 from wherever the customer uses the service, whether at home or away from home. The Commission made no findings regarding whether a VoIP service interconnected with the public switched telephone network (PSTN) should be classified as a telecommunications service or an information service.²

The FCC concludes it has authority under Title 1 of the Communications Act of 1934 to impose E911 requirements on interconnected VoIP service providers. Section 1 of the Act states that

¹ For purposes of the present Order, the Commission defines “interconnected VoIP service” as having the following characteristics: 1) the service that enables real-time, two-way voice communications; 2) the service requires a broadband connection from the user’s location; 3) the service requires IP-compatible customer premises equipment (CPE); and 4) the service offering permits users generally to receive calls that originate on the PSTN and to terminate calls to the PSTN. (NPRM, ¶ 24.)

² Similarly, in the *Vonage Order*, the FCC did not classify Vonage’s service as either an information service or as a telecommunications service. Rather, the FCC preempted the Minnesota Commission’s Order that applied telephone company regulations to Vonage’s DigitalVoice service, holding that it cannot be separated into interstate and intrastate communications without negating federal policies and rules. (Vonage Order, 19 FCC Rcd 22404 (2004) *appeal pending*; *National Ass’n of State Util. Consumer Advocates v. FCC*, No. 05-71238 (9th Cir. Filed Feb. 22, 2005). The E911 requirements in this Order apply to all VoIP services encompassed within the scope of the Vonage Order.

the FCC was created for “the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States...a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges.” (47 U.S.C §151)

Section 2(a) grants the FCC

regulatory authority over all interstate communication by wire or radio. (47 U.S.C. §152(a).) The FCC concludes that Title 1 gives it ancillary jurisdiction to promote public safety by adopting E911 rules for interconnected VoIP services. Ancillary jurisdiction may be used when Title 1 gives the FCC subject matter jurisdiction over the service to be regulated and the assertion of jurisdiction is reasonably ancillary to the effective performance of its various responsibilities.³ In addition, the 911 Act gives the FCC the responsibility to “encourage and facilitate the prompt deployment throughout the United States of a seamless, ubiquitous, and reliable end-to-end infrastructure” for public safety. (Wireless Communications and Public Safety Act of 1999, Pub. L. No. 106-81, 113 Stat. 1286, §1(b) (1999)(911 Act).)

The FCC also points to its plenary numbering authority under §251(e) of the Act as a source of its authority to promulgate these rules. (47 U.S.C. §251(e).) That section gives the FCC exclusive jurisdiction over numbering in the North American Numbering Plan (NANP). VoIP providers do not obtain telephone numbers as carriers from the NANP Administrator, but they do acquire them as customers of regulated carriers, and the use of such numbers implicates federal authority.

³ The standard for asserting ancillary jurisdiction consists of two prongs: 1) subject matter

At the same time the FCC adopted this Order, the Commission issued a Notice of Proposed Rulemaking (NPRM) seeking comment on such issues as: 1) what additional steps the Commission should take to ensure that providers of interconnected VoIP service provide ubiquitous and reliable E911 service; 2) whether the Commission should expand the scope and requirements of this Order; 3) the role the states can play in implementing this Order; and 4) the need for privacy protections.

I. WHAT THE FCC CAN DO TO FURTHER THE DEVELOPMENT OF THIS NEW TECHNOLOGY

The NPRM notes that this Order, in some cases, relies on users to provide the location information that will be delivered to public safety answering points (PSAPs) in an emergency and seeks comment on what the FCC can do to further the development of VoIP technology, including whether the Commission should expand the scope and requirements of this Order. (NPRM, ¶ 56.)

California acknowledges the urgency of providing ubiquitous 911(E911) services to advanced technologies such as VoIP. However, any expansion of the scope and requirement of this Order must be accompanied by a consideration of funding sources that should be used to bring the services up to the standards established for 911 call processing and delivery. The FCC should therefore coordinate closely

jurisdiction; and 2) the statutory goal furthered by the regulation.

with state and local agencies, and provide a federal mechanism for the recovery of costs that state and local governmental entities may incur in implementing the FCC's rules. In California, the Department of General Services (DGS-TD), Telecommunications Division, which is responsible for administering funds to support and maintain the 911 network and database, is a major player. DGS-TD fully comprehends the issues that the inclusion of VoIP into the 911 network brings. This includes issues such as call routing requirements, i.e., defining the PSAPs to participate in answering VoIP calls; VoIP connectivity to existing incumbent local exchange carrier (ILEC) 911 selective routers; conforming to a statewide format for wireless location information displays; potential VoIP cost recovery; and minimizing the technical and fiscal impact of equipment upgrades at the existing PSAPs in California. Great care must be taken so that the deployment of fixed and mobile VoIP 911 calls in California do not compromise the integrity of the 911 system and associated call processing.

II. THE ROLE THE STATES CAN AND SHOULD PLAY IN THE IMPLEMENTATION OF THE REQUIREMENTS OF THIS ORDER

The NPRM seeks comment on what role the states can and should play to help implement the E911 rules adopted in this Order.

(NPRM, ¶ 61.) Applying E911 rules to interconnected VoIP services requires the cooperation and coordination of all parties involved.

Congress recognized that most of the key decisions in improving 911 service are not made by the Commission, but by the private sector and state and local governments, and the implementation of 911 systems is carried out at the local level.

The key role played by state and local entities is evident in the passage of the 911 Act, which directed the Commission to designate 911 as the universal emergency assistance number for wireless and wireline calls.⁴ The overarching goal of the 911 Act was to achieve a coordinated, nationwide emergency communications network that integrates the latest technologies and ensure improved and prompt delivery of emergency services. Specifically, §3(b) of the 911 Act directs the Commission to “encourage and support efforts by States to deploy comprehensive end-to-end emergency communications infrastructure and programs, based on coordinated statewide plans, including seamless, ubiquitous, reliable wireless telecommunications networks and enhanced wireless 911 service.”⁵ The 911 Act further directs the

⁴ 911 Act, §3(a)(codified at 47 U.S.C. sec. 251(e)(3)). In August 1999, the Commission complied with this directive when it issued *N11 Codes Fourth Report and Order*, 15 FCC Rcd at 17083, ¶¶ 8-14.

⁵ 911 Act, 47 U.S.C. §251(e)(3).

Commission to “encourage each State to develop and implement coordinated statewide deployment plans, through an entity designated by the governor, and to include representatives” of various relevant organizations and other stakeholders in the development and implementation of such plans.

States have played an important and historic role in creating and regulating 911/E911 operations – for wireline and wireless services alike. States can play an additional role of monitoring the myriad interconnected VoIP service providers to ensure that they are in compliance with this Order. The NPRM asks if the Commission should impose reporting obligations on VoIP service providers other than the compliance letter imposed in this Order, and if there are other ways for

the FCC to monitor implementation of its E911 rules without imposing reporting requirements. PRM, ¶60) The kind of monitoring that is required would be extremely difficult for the FCC to do at the national level. Indeed, there should be additional monitoring, and it should begin at the local level. This is where state and local governments can play an important role. The local entities are in the best position to monitor implementation of the E911 rules. The state itself can have oversight responsibility for ensuring that access to emergency services is accomplished throughout the state, and ensure that VoIP service providers do not abuse access to customer information.

Additional responsibilities incur additional costs. The FCC asks whether it should take any action to facilitate the states' ability to collect 911 fees from interconnected VoIP providers, directly or indirectly. (NPRM, ¶ 61.) California concurs that the Commission should take action to facilitate the states' ability to collect 911 fees from interconnected VoIP providers. Since state and local entities are in the front line of providing access to emergency services through 911 and E911, the FCC should make it easier for state and local bodies to collect the fees expeditiously and utilize them where they are needed most.

III. THE NEED FOR PRIVACY PROTECTIONS

When the rules are fully implemented, interconnected VoIP service providers will be required to transmit a customer's Registered Location to an appropriate PSAP, which necessarily requires providers of such services to maintain a list of their customers' Registered Location, and make that information available to public safety professionals and others when the customer dials 911.⁶ This has clear privacy implications. The location of a customer's physical whereabouts in the wrong hands could be catastrophic. The information garnered from customers should be used only for the purpose intended. Mechanisms should be put in place to ensure that customer information is not misappropriated for some use not intended.

The Order notes that wireless and wireline telecommunications carriers are already subject to privacy requirements through Section

⁶ Since it is not always technologically feasible for providers of interconnected VoIP to automatically determine the location of their end users without their active cooperation, the Commission requires providers to obtain from each customer the physical location at which the service will first be used, before initiating the service. In addition, providers of interconnected VoIP services that can be used from more than one physical location must provide their end users with one or more methods of updating information regarding the user's physical location. Whatever method is used must allow an end user to update his/her Registered Location at will and in a timely manner, including at least one option that requires use only of the CPE necessary to access the interconnected VoIP service. The most recent location provided to an interconnected VoIP provider by a customer is the Registered Location. (Order, ¶46)

222 of the Act.⁷ The NPRM seeks comments on whether the Commission should adopt similar privacy protections in the context of interconnected VoIP service, which to date has not been classified as either an information service or a telecommunications service. (NPRM, ¶62) Section 222 applies to telecommunications carriers under the Act. California concurs that the FCC should adopt similar privacy protections applicable to interconnected VoIP service. California sees the need for strong privacy protections. Privacy is a constitutional right in California that deserves the

⁷ Section 222 of the Act prohibits telecommunications carriers from disclosing customer proprietary network information (CPNI), including customer location information, without customer approval. 47 U.S.C. §222(c) (1). A customer's address that is listed in a directory is excluded from the definition of CPNI. 47 U.S.C. §222(h)(3).

utmost protection. (Cal. Const., Art. 1, §1.) In this era of terrorism, identity theft, and other intrusions on privacy, it is not too much to ask that government be a part of the solution, and not the problem, of safeguarding privacy.

IV. CONCLUSION

The CPUC respectfully submits these comments on the rules the Commission adopted for interconnected VoIP providers in this Order. California agrees that it is critically important to impose E911 obligations on interconnected VoIP providers, and endorses a balanced approach that promotes the cooperation of state and local governments, PSAP administrators, 911 systems service providers, and interconnected VoIP providers to ensure that consumers have ubiquitous access to public safety in times of crisis.

Respectfully submitted,

RANDOLPH L. WU
LIONEL B. WILSON
MARY MACK ADU

By: /s/ MARY MACK
ADU

MARY MACK ADU

505 Van Ness Ave.
San Francisco, CA 94102
Phone: (415) 703-1952
Fax: (415) 703-4432

Attorneys for the People of

State of California and the
California Public Utilities
Commission

the

August 8, 2005